

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.06.2018

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.11636 of 2008
and
M.P.No.1 of 2011

1. Kanakaraj (deceased)
2. Anandan
3. William Raj
4. Chinnadurai ... Petitioners

(Petitioners 2 to 4 are substituted as LRs of deceased first petitioner Kanakaraj, as per order dated 14.06.2018 in M.P.No.1 of 2011 in W.P.No.11636 of 2008)

Versus

1. The Superintendent of Police
Coimbatore Rural District
Coimbatore - 18.
2. The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai - 4. ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the order of dismissal from service issued by him in C.No.J3/51833/94 DO No.1038/2002 dated 21.08.2002 and quash the same and direct the respondents to implement the orders issued in C.No.J1/PR62/91 in DO No.777/94 dated 10.08.1994 and grant him all consequential retirement benefits.

For Petitioner : Mr.K.Venkatramani,
Senior Counsel
for
Mr.M.Muthappan

For Respondents : Mr.M.Elumalai
Government Advocate

ORDER

This Writ petition is filed praying issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the order of dismissal from service issued by him in C.No.J3/51833/94 DO No.1038/2002 dated 21.08.2002 and quash the same and direct the respondents to implement the orders issued in C.No.J1/PR62/91 in DO No.777/94 dated 10.08.1994 regarding compulsory retirement and grant him all consequential retirement benefits.

2. The learned counsel for the petitioner would contend that the petitioner entered the service as a police constable in Coimbatore District in the year 1962 and he was falsely implicated in a criminal case registered in Crime No.103/88 on the file of Karamadai Police Station for offences under Section 376, 511, 323 and 4(1)(j) of TNP Act and the case was tried before the Assistant Sessions Judge, Tiruppur and the case ended in acquittal on 19.11.1994.

3. The learned counsel would further contend that for the same set of allegations, the first respondent proceeded with disciplinary action. During the pendency of the disciplinary proceedings and the criminal case, the petitioner was placed under suspension and the same was challenged before the Tamil Nadu Administrative Tribunal in O.A.No.445 of 1992 and the Tribunal by order date 28.04.1992 was pleased to stay the disciplinary proceedings. The disciplinary proceedings has not been concluded, but the petitioner was imposed with a major penalty of compulsory retirement from service vide order of the Superintendent of Police, Coimbatore District on 10.08.1994. The Tribunal vide order dated 19.08.1994 made in O.A.No.4295 of 1994 stayed the order of compulsory retirement from service initially for a period of 3 weeks and subsequently, it was extended until further orders and based on which, the Superintendent of Police vide order dated 05.09.1994 revoked the orders of compulsory retirement from service and reinstated the petitioner into service. Later on, the said O.A was transferred to this Court and numbered as W.P.No.16653 of 2006 and was withdrawn on 04.02.2008.

4. The learned counsel would also contend that aggrieved against the order of acquittal dated 19.11.1994 passed by the learned Assistant Sessions Judge, Tiruppur, the State preferred an appeal before this Court in Crl.A.No.86 of 1995 and this Court by order dated 10.07.2002 allowed the Criminal Appeal and convicted the petitioner and imposed a punishment of 3 years rigorous imprisonment with fine of Rs.1,000/-. Therefore, the petitioner surrendered before the lower court and remanded to judicial custody to undergo the punishment. Aggrieved over the

conviction and sentence, the petitioner preferred a Special Leave Petition No.6208 of 2003 before the Hon'ble Supreme Court and the same was dismissed at the time of admission on 01.08.2003. Consequently, the petitioner was arrested on 28.08.2003 and remanded to custody and was released on 26.06.2005. In the mean while, based on the conviction sustained in the criminal case, the petitioner was issued with a show cause notice dated 05.08.2002 as to why he should not be dismissed from service. As the petitioner has not submitted any reply in time due to his preoccupied work in connection with preferring of Special Leave Petitioner before the Hon'ble Supreme Court, the Superintendent of Police, Coimbatore, vide order dated 21.08.2002 dismissed the petitioner from service.

5. It is further contended by the learned counsel for the petitioner that the first respondent, who has already imposed a punishment of compulsory retirement on 10.08.1994 on the petitioner which has not been cancelled, cannot impose another punishment of dismissal from service for the same set of allegations. Moreover, on vacating stay of punishment of compulsory retirement from service, the said punishment of compulsory retirement come into force. Hence, the order of dismissal from service dated 21.08.2002 is non-est and cannot be implemented.

6. That apart, the learned counsel would further contend that based on the orders of compulsory retirement from service dated 10.08.1994, the petitioner is eligible to receive all pensionary benefits and hence, the petitioner made representation dated 03.11.2016 requesting to sanction the pension due to him. As no orders were passed, the petitioner approached this Court in W.P.No.20635 of 2007 and this Court was pleased to issue a direction to the respondents to pass orders on the representation dated 03.11.2016 within a period of six weeks, but so far no orders have been passed. Hence, this petition seeking to quash the order of dismissal and direction to the respondents to implement the order of compulsory retirement and grant the petitioner all consequential retirement benefits.

7. The respondents had filed counter affidavit and had stated that Tr.G.Kanagaraj (PC 1325/CR) was enlisted as Police Constable on 17.01.1966 and attached to Mettupalayam Police Station. On 23.07.1988 at about 15:00 hrs at a Kodikhal near Natha Gounden Thottam of Mettupalayam, within Karamadi Police Station limits, the applicant in a drunken mood and in the police uniform forcibly stripped of the dress of one Saraswathy @ Sarasu D/o.Krishnan Nadayan, minor, aged about 17 years, had pushed her down and thereby attempted to rape her. On the complaint of the victim girl, a case in Karamadai Police Station

Crime No.103/88 under Section 376 r/w.511 and 323 IPC and Section 4(1)(j) TNP Act was registered against him and the petitioner was charge sheeted before the Court of Assistant Sessions Judge, Tiruppur by Sub-Collector Coimbatore in S.C.No.109 of 1993. In the meanwhile, the petitioner was placed under suspension with effect from 23.07.1988 and as per order of the Tribunal in O.A.No.445 of 1992 dated 23.04.1992, the applicant was released from suspension with effect from 10.06.1992. As per the existing rules, simultaneous departmental action was also taken and he was awarded with punishment of compulsory retirement vide order dated 10.08.1994. The petitioner had challenged the order of compulsory retirement before the Tamil Nadu Administrative Tribunal in O.A.No.4295 of 1994 and based on the orders dated 19.08.1994 and 02.09.1994, he was reinstated into service on 13.09.1994 A.N.

8. It is further contended by the learned counsel for the respondents that as the criminal case launched in S.C.No.109 of 1993 was ended in acquittal on 18.11.1993, the RDO, Coimbatore has preferred an Appeal in Crl.A.No.86 of 1995 before this High Court and this Court had allowed the Appeal on 10.07.2002 and convicted the petitioner and imposed a sentence of three years rigorous imprisonment and fine of Rs.1000/-. Pursuant to the same, action was taken against the applicant as laid down in rule 3(c)(1) of TNPSS (D & A) Rules and also defined in Police Standing Order 66(1) of Vol.I (New Edition) Police Standing Order 59(1) (Old Edition) and observing all formalities, the petitioner was dismissed from service in proceedings in C.No.J3/51833/94 DO No. 1038/2002 dated 21.08.2002 by the first respondent. Insofar as the representation of the petitioner to grant him pensionary benefits is concerned, the same was consider and reply was given to him on 27.09.2007 in C.No.J3/51833/94 dated 18.09.2007 stating that as he was dismissed from service, no pensionary benefits are eligible. Hence, the respondents prayed this Court to dismiss the Writ Petition as devoid of merits.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials on record.

10. It could be seen from the contention of the petitioner that for the case registered against the petitioner in Crime No.103 of 1988 on the file of Karamadai Police Station for offences under Section 376, 511, 323 and 4(1)(j) of TNP Act, a departmental proceedings No.62/91 was initiated and the petitioner was placed under suspension and the same was challenged before the Tamil Nadu Administrative Tribunal in O.A.No.445 of 1992 and the Tribunal has passed an order of stay of disciplinary proceedings. After enquiry, the petitioner was

placed under compulsory retirement from service by the Superintendent of Police, Coimbatore Rural District in his C.No.J1/PR62/91 in DO No.777/94 dated 10.08.1994. The compulsory retirement from service was stayed by the Tribunal in O.A.No.4295 of 1994 dated 19.08.1994 and by order dated 05.09.1994, the Superintendent of Police, Coimbatore had revoked the order of compulsory retirement from service and reinstated the petitioner into service.

11. It could be also seen that aggrieved by the order of the Sessions Court in S.C.No.109 of 1993 acquitting the petitioner, the State had preferred an Appeal before the Hon'ble High Court in Crl.A.No.86 of 1995 and the Hon'ble High Court was pleased to allow the Appeal filed by the State.

12. On perusal of the above order passed in Crl.A.No.86 of 1995 by the Hon'ble High Court, it could be seen that the victim girl was a minor at the time of occurrence, who has been picking up neem fruits at a Kodikhal near Natha Gounden Thottam of Mellapalayam, within Karamadai Police Station limits, the petitioner/accused, who is a constable, had taken advantage of the situation where the minor girl was alone, had committed the crime by tearing the dress of the minor girl and pushing her down for the said attempt to rape. As the finding given that even though there was no symptom of rape on the victim as in the complaint it was only an attempt to commit rape, the evidence given by all the witnesses, which was rejected by the Sessions Court was not accepted by the High Court, wherein it has taken the evidences and has not accepted the version of the petitioner that due to previous enmity he has been falsely implicated in this case. There was no evidence produced by the petitioner/accused that there was enmity between him and one Kandasamy, who had relationship with P.W.1.

13. It is seen that the Investigating Officer as well as the Sub-Collector have denied the suggestion that the accused has told them that this case has been falsely foisted by the said Kandasamy. Mere denial of the case of the prosecution will not be of any help to the petitioner and has not been accepted the same as a true statement since the girl was lying down in a pit without any dress and the clothes were torn apart and the evidences of PW.1, PW.5 and PW.6 are corroborated with the evidence of PW.1, which were recorded by PW.4 Tahsildar, and since there was an attempt to commit rape of PW.1, the entire public had tied the petitioner in a telephone post and had complained to the police officials, and therefore, the commission of offence to attempt to commit rape under Section 376 r/w.511 IPC is proved beyond reasonable doubt.

14. Even though the petitioner's contention that the act

does not amount to an offence under Sections 376 r/w.511 IPC and it can only attract Section 344 IPC, the same was not accepted by the Hon'ble High Court as enough evidence was available on record to prove that this was more than an act of outraging the modesty of a woman. Since there was an evidence to prove the same, the order of acquittal by the Assistant Sessions Judge was set aside by the Hon'ble High Court. At the time of occurrence, the police constable was in drunken mood. Though the accused was caught while committing the offence and was handed over to the police, the trial Court has not taken all the evidences into account and acquitted him. But the Hon'ble High Court had considered the case of the accused and had imposed a sentence of rigorous imprisonment for 3 years and fine of Rs.1000/-. After the said order of the Hon'ble High court in the Appeal, the Superintendent of Police, Coimbatore Rural District, by its proceedings in C.No.J3/51833/94 DO No.1038/2002 dated 21.08.2002 had passed an order, in accordance with rule 3(c)(1) of TNPSS (D & A) Rules and also defined in Police Standing Order 66(1) of Vol.I (New Edition) Police Standing Order 59(1) (Old Edition), dismissing the petitioner from service with effect from the date of acknowledgment of the order,

15. Rule 3(c)(1) of Tamil Nadu Police (Discipline & Appeal) Rules, is extracted hereunder:-

"A member of service may be placed under suspension from service, where-

(i) an enquiry into grave charges against him is contemplated or is pending, or
(ii) a complaint against him of any criminal offence is under investigation or he is under trial and if such suspension is necessary in the public interest."

16. Police Standing Order 66(1) of Vol.I (New Edition) Police Standing Order 59(1) (Old Edition), reads as under:-

"PSO 66. Punishment after conviction:

(1) A police Officer convicted of an offence involving moral turpitude and sentenced to undergo imprisonment shall ordinarily be dismissed or removed from service. In cases where a Police Officer is convicted and sentenced to undergo imprisonment for an offence not involving moral turpitude, he may be compulsorily retired from service by the competent authority.

(2) "

17. It is further seen in the said proceedings, a show

cause notice dated 05.08.2002 was served on the petitioner on 08.08.2002 to offer his explanation within 7 days from the date of receipt of the said show cause notice. Though the petitioner was given 7 days time to submit his explanation, he has not replied to the said show cause notice within the said time given. Later, he was reminded about the same on 17.08.2002 to submit his explanation within 3 days from the date of receipt of the reminder. Even though the petitioner had acknowledged the same on 17.08.2002, he has not bothered to submit any explanation. Hence, the Superintendent of Police, Coimbatore Rural District has no other option to pass dismissal order on 21.08.2002.

18. Aggrieved by the order of the High Court, the petitioner had filed Special Leave Petition No.6208 of 2003 before the Hon'ble Supreme Court and the same was dismissed on the admission stage itself on 01.08.2003. Therefore, the petitioner was arrested on 28.08.2003 and made to undergo the imprisonment and released from the prison on 26.05.2005.

19. It is the contention of the petitioner that since the stay of compulsory retirement from service was vacated, the earlier punishment of compulsory retirement came into force and he cannot be imposed with the punishment of dismissal from service for the same set of allegations and therefore, he sent a representation to the respondents that since the compulsory retirement was in force after the vacation of stay, he cannot be imposed with another punishment of dismissal from service again for the same allegations and he should be kept on compulsory retirement from service and thus, he is entitled to receive all the pensionary benefits, which includes pension, gratuity etc.,. Since there was no reply received from the respondents, he filed W.P.No.20635 of 2007. The Hon'ble High Court has passed an order dated 15.06.2007 which is as follows:-

"2. Without expressing any opinion about the merits of the matter or merits of the representation of the petitioner dated 30.11.2006, the respondents are directed to consider the same on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs."

20. The petitioner had filed the present Writ Petition in the year 2008, seeking to issue a Writ of Certiorarified Madamus to call for the records of the first respondent in connection with the order of dismissal from service issued to him in C.No.J3/51833/94 DO No.1038/2002 dated 21.08.2002 and quash the same and direct the respondent to implement the orders issued in C.No.J1/PR62/91 in DO No.777/94 dated 10.08.1994 and grant him

all consequential retirement benefits.

21. As discussed above, it could be seen that the petitioner deceased Kamaraj, who was in uniformed service as Police Constable, is expected to protect the citizens and the general public, but who was in inebriated condition while he was on duty in the police uniform, had forcibly stripped of the minor girl, who was aged about 17 years and attempted to rape her. Though there was evidence for such act of attempt to rape committed and due to the intervention of the public, who have come to the rescue of the minor girl when the victim raised alarm, had averted the said incident. Even though the petitioner pleaded non-guilty, as he was tried for the said offence, the act of the deceased person was referred to the Sub-Collector, Salem for an enquiry, but the Sub-Collector on 12.04.1990, had sought the Collector's intervention to launch a criminal prosecution against the deceased Kamaraj, and as such a criminal case was launched and was numbered as S.C.No.109 of 1993. Though the petitioner moved the Tribunal in O.A.No.445 of 1992 against the order of suspension, the petitioner was initially suspended under the departmental rules while action was initiated against him, and later on he was released from suspension with effect from 10.06.1992. Thereafter, in the departmental action against the petitioner, charges were held proved and the petitioner was awarded punishment of compulsory retirement. The petitioner has challenged the said order of compulsory retirement in O.A.No.4295 of 1994 before the Tamil Nadu Administrative Tribunal, who had granted stay on 19.08.1994, which paved way for reinstatement of the petitioner into service.

22. The learned Senior Counsel, who appeared for the petitioner would submit that once the department had initiated proceedings for a charge under an enquiry, they cannot have any right to proceed against the delinquent on the same set of charges on different enquiry. The learned counsel for the petitioner would further state that the petitioner having been initiated by departmental enquiry and was awarded a punishment of compulsory retirement, thereafter cannot be proceeded further on the same set of charges and awarded punishment of dismissal from service.

23. The question has to be decided is whether the action of the respondents in dismissing the petitioner from service in C.No.J3/51833/94 DO No.1038/2002 dated 21.08.2002 in accordance with rule 3(c)(1) of TNPSS (D & A) Rules and also defined in Police Standing Order 66(1) of Vol.I (New Edition) Police Standing Order 59(1) (Old Edition) is valid or not.

24. As stated supra, the petitioner was dismissed from

service by the first respondent in his proceedings No.C.No.J3/51833/94 DO No.1038/2002 dated 21.08.2002 in accordance with rule 3(c)(1) of TNPSS (D & A) Rules and also defined in Police Standing Order 66(1) of Vol.I (New Edition) Police Standing Order 59(1) (Old Edition).

25. It could be seen that the department had initiated proceedings against the petitioner initially when he was charge sheeted for the offence under Sections 376 r/w.511 and 323 IPC and Section 4(1)(j) of TNP Act and was awarded punishment of compulsory retirement on 10.09.1994, which was considered and he was reinstated into service on 13.09.1994 A.N.

26. The contention of the petitioner is that the respondent has issued an order of revocation on 05.09.1994 and thereby, the original status of the deceased petitioner is restored and he continued in the traffic department till the disposal of the O.A.

27. The Criminal case filed against the petitioner was charge sheeted in the Sessions Court in S.C.No.109 of 1993 and ended in acquittal during 1993, which was challenged before the High Court by the department in Appeal No.86 of 1995. The Hon'ble High Court allowed the appeal on 10.07.2002 and had set aside the order of the Sessions Court and imposed three years rigorous imprisonment and ordered to pay a fine amount of Rs.1,000/-. This order passed by the Hon'ble High Court has paved way to the respondents to initiate fresh proceedings as per Police Standing Order 66(1) of Vol.I (New Edition) Police Standing Order 59(1) (Old Edition), which prescribes punishment after conviction, namely, A police Officer convicted of an offence involving moral turpitude and sentenced to undergo imprisonment shall ordinarily be dismissed or removed from service. Hence, a notice to show cause was issued on 05.08.2002 and served on the petitioner on 08.08.2002 to render his explanation within seven days from the date of said show cause notice. The petitioner, despite receiving the same, has not chosen to give any explanation within the prescribed time and hence, he was reminded again on 17.08.2002, which was also not adhered to. Hence, by proceedings No.C.No.J3/51833/94 DO No.1038/2002 dated 21.08.2002, the petitioner was dismissed from service by the first respondent. Once the petitioner has been dismissed from service, the petitioner is not entitled to claim any pensionary benefits.

28. It could be seen that, in the mean time, the petitioner had approached the Hon'ble Supreme Court by filing Special Leave Petition in SLP No.6208 of 2003 as against the order passed in Criminal Appeal No.86 of 1995, which was also ended in dismissal on 01.08.2003 and hence, the petitioner had no other choice, but

had to surrender before this Court on 28.08.2003 and remanded to custody.

29. The petitioner has filed O.A.No.4295 of 1994 before Tamil Nadu Administrative Tribunal against the order of compulsory retirement, which was renumbered as W.P.No.16653 of 2006 and later on, the petitioner had withdrawn the same on 03.03.2008. On perusal of the said proceedings initiated by the department, it is seen that, as per existing rules, charges were framed against the petitioner and the petitioner was awarded with compulsory retirement. When the punishment of compulsory retirement was challenged by the petitioner before the Tamil Nadu Administrative Tribunal, the order of compulsory retirement was set aside and therefore, the department has revoked the initial order of compulsory retirement in total and restored the position of the petitioner. Once the petitioner was reinstated into service in the year 1994, the entire proceedings relating to compulsory retirement ended at that juncture.

30. However, the petitioner though was acquitted by the Sessions Judge, subsequently, convicted by the Hon'ble High Court, wherein the Hon'ble High Court found that the petitioner was involved in a gruesome offence, which is a barbaric act, that too trying to rape a minor girl, who was only 17 years old, and awarded a punishment of imprisonment of 3 years with fine of Rs.1000/-, and the Special Leave Petition filed by the petitioner was also ended in a dismissal and hence, the order of the Hon'ble High Court convicting and sentencing the petitioner with imprisonment becomes final. Based on the conviction order of the Hon'ble High Court, the department had initiated fresh proceedings and had issued show cause notice dated 05.08.2002 to the petitioner as to why he should not be dismissed from service. Since there was no valid explanation given by the petitioner for the said notice dated 05.08.2002, the petitioner was dismissed from service with effect from the date of receipt of the order, in accordance with Police Standing Order 66(1) of Vol.I (New Edition). From the above proceedings initiated, it could be seen that when the department had issued a show cause notice dated 05.08.2002, there was a fresh cause of action arose, which is totally different from the departmental proceedings regarding compulsory retirement initiated by the first respondent dated 10.08.1994 and the compulsory retirement order has come to an end, when it came to be stayed by Tamil Nadu Administrative Tribunal and it was totally revoked by the order dated 05.09.1994.

31. There cannot be any such imagination one can accept the arguments of the learned senior counsel, who seems to have appeared for the first respondent department in O.A.No.4295 of 1994, filed by the petitioner herein, before the Tamil Nadu

Administrative Tribunal, viz., the learned senior counsel appeared against the petitioner and now the very same learned senior counsel is appearing for the petitioner against the department. The learned senior counsel trying to make out a case that double jeopardy has been committed by the first respondent punishing the petitioner twice for the same set of offences committed by the petitioner. Though both the order of compulsory retirement dated 10.08.1994 and the order of dismissal dated 21.08.2002 arose from the single offence of attempting to rape by the petitioner, both orders were issued on a different set of cause of actions, namely, earlier the compulsory retirement arose based on the departmental enquiry on the basis of the involvement of the petitioner in the criminal offence when the petitioner was charged with the offence under Sections 376 r/w, 511 323 and 4(1)(j) of TNP Act, and later on, the order of dismissal from service is passed by the department based on the conviction order passed by the High Court, wherein the petitioner was held guilty for attempting to rape a minor girl, and also the dismissal of SLP filed by the petitioner challenging the said conviction order, at the admission stage itself by the Hon'ble Supreme Court.

32. Apart from that, the Hon'ble Apex Court in number of judgments held that acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and department are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules.

33. The petitioner, who is in uniform service is supposed to maintain the dignity and discipline, be a role model for others, ought not to have indulged in such kind of crime, which would have caused a mental agony to the said victim. Attempting to rape a minor girl will definitely cause a scar in the mind of the victim and this has to be taken on serious note.

34. As per the Fundamental Rules, the person who has been dismissed from service is not eligible for any pensionary benefits. The police persons are to protect the individual persons who are living in the community and they are inducted into service to maintain Law and Order and to protect the citizens from any crime. Instead of serving the people at large, the petitioner had tried to commit a crime against an individual, that too, a minor girl by attempting to rape her. The said act of the police cannot be accepted by any human being that too, when the petitioner while he was in duty in drunken

mood in the uniform had tried to do such barbaric act, which is highly condemnable and this Court is not ready to accept the version of the petitioner. Also as per the rules laid down in Police Standing Orders and TNPSS (Disciplinary and Appeal) Rules, the petitioner is not entitled to any benefits to be disbursed to him.

35. The Petitioner's contention that once he was awarded punishment of compulsory retirement and which was challenged and there was a stay granted, he should be treated as in compulsory retirement, cannot be accepted for the reason that once the order of compulsory retirement is revoked and the petitioner was reinstated into service, all the previous orders passed against him abate and the final order passed by the Superintendent of Police, Coimbatore Rural District in his proceedings No.C.No.J3/51833/94 DO No.1038/2002 dated 21.08.2002 became final, that too, when the petitioner has committed a crime against the minor girl and convicted under Sections 376 r/w.511 IPC. It is evident from the record that the departmental proceedings initiated against him in PR No.62/91 wherein he was awarded a punishment of compulsory retirement, which was challenged by him and based on the orders of the Tamil Nadu Administrative Tribunal, he was reinstated into the service back on 13.08.1994. When the order of acquittal in S.C.No.109 of 1993 of was challenged before the High Court by the Department, the High Court was pleased to convict him to undergo 3 years Rigorous Imprisonment and ordered to pay fine amount and when the same was challenged by the petitioner by way of filing SLP No.6208 of 2003, which was also dismissed and the petitioner was arrested and made to undergo the imprisonment. Hence, the order of dismissal from service passed by the respondent by applying rule 3(c)(1) of TNPSS (D & A) Rules and also defined in Police Standing Order 66(1) of Vol.I (New Edition) Police Standing Order 59(1) (Old Edition) is in order.

36. This Court is of the view that such kind of persons, like the petitioner, in the uniformed service is a 'black mark' to the said service personnel and such kind of persons are to be punished suitably, which has been done so by this Hon'ble High Court in the Appeal filed by the State in CrI.A.No.86 of 1995. In the above circumstances, no mercy should be given on the petitioner on technical grounds, and even if it is to be shown, the technicalities are also against the petitioner to claim double jeo pardy.

37. As the order was made ready, this Court posted the matter on 21.06.2018 under the caption 'for pronouncing orders'. When this Court was ready to pronounce the order, the learned counsel for the petitioner added some more points regarding double jeopardy citing the judgment of this Court reported in

(2009) 4 MLJ 708 (D.Narayana vs. District Revenue Officer, Virudhunagar), which relates to double jeopardy, wherein the order of the Tribunal confirmed the order of dismissal. In that case, the petitioner therein was subjected to punishment of stoppage of increment in disciplinary proceedings on allegation that there was temporary misappropriation of Government funds and later on, he was convicted in the criminal case on the same allegation and the disciplinary authority imposed second punishment of dismissal from service on the basis of very same allegation of temporary misappropriation. This Hon'ble Court held that imposition of such punishment on the basis of temporary misappropriation would amount to double jeopardy. The facts and circumstances of the case cited above and the case on hand are entirely different. Moreover, as already stated, the criminal proceedings and departmental proceedings are entirely different. In this case, compulsory retirement awarded by the department earlier, was revoked. Later on, pursuant to the conviction order passed by this Court, the petitioner was dismissed from service according to rule 3(c)(1) of TNPSS (D & A) Rules and also defined in Police Standing Order 66(1) of Vol.I (New Edition) Police Standing Order 59(1) (Old Edition), wherein it is stated that a police officer convicted of an offence involving moral turpitude and sentenced to undergo imprisonment shall ordinarily be dismissed or removed from service. In this case, the crime committed by the deceased petitioner warrants dismissal from service, which will not come under double jeopardy. Hence, in the facts and circumstances of the case on hand, the citation relied on by the Learned counsel for the petitioner, is not applicable to the present case on hand.

38. Under the above circumstances, the deceased petitioner is not entitled for any pensionary benefits as he is dismissed from service. Accordingly, the Writ Petition fails and the same is dismissed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mra

To

1. The Superintendent of Police
Coimbatore Rural District
Coimbatore - 18.

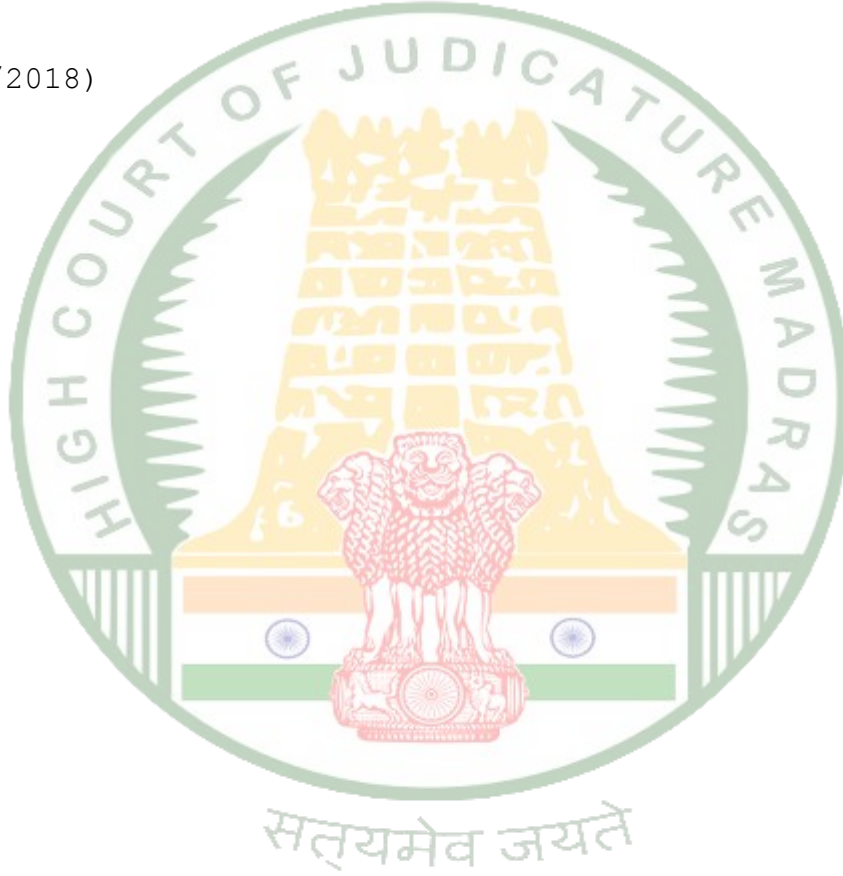
2. The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai - 4.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.39771

+1cc to the Government Pleader, S.R.No.39952

Writ Petition No.11636 of 2008
and
M.P.No.1of 2011

GSP (29/06/2018)



WEB COPY